

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

VS.

4:08-CR-00104-01-SWW

CLIFTON LAMON THOMAS

ORDER

Pending is Defendant's Motion for Reconsideration (Doc. No. 57). Defendant asserts that he sought relief under U.S.S.G. Amendment 706 (the 2008 amendment that lowered the base offense level for crack offenses), not the amendment mentioned in the September 23, 2011, Order.

Whether the request is based on Amendment 706 or 750, the result is the same. Again, Defendant's sentence was not determined based on the drug quantity table, but rather on the agreed-to 72 month sentence set out in his Rule 11 plea agreement.¹ Once accepted by the court, a Rule 11 plea agreement is binding on the government, defendant, and the court. Since Defendant's sentence was based on the binding agreement, and not the guidelines, 18 U.S.C. § 3582(c)(2) is "inapplicable."² Therefore, neither crack cocaine sentencing guideline amendment applies to this case.

Notably, even if Defendant had not entered a Rule 11 plea, he would not be eligible for a reduction because his base offense level was based on his status as a career offender under U.S.S.G. § 4B1.1.³

Accordingly, Defendant's Motion for Reconsideration (Doc. No. 57) is DENIED.

IT IS SO ORDERED this 19th day of October, 2011.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE

¹See Doc. No. 40. According to the Presentence Report, without the benefit of the agreed-to 72-month sentence, Defendant was a "career offender" whose guideline range was 188 to 235 months.

²*United States v. Scurlark*, 560 F.3d 839, 842-43 (8th Cir. 2009).

³See *United States v. Washington*, 618 F.3d 869, 872-73 (8th Cir. 2010); see also, the United States Sentencing Commission's "Reader-Friendly" Version of the Final 2011 Guideline Amendment Implementing the Fair Sentencing Act, available at http://www.ussc.gov/Meetings_and_Rulemaking/Materials_on_Federal_Cocaine_Offenses/20110428_RF_Amendments_Pages.pdf